86-1291

Supreme Court, U.S.
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NO.

IN THE SUPREME COURT OF THE UNITED STATES

JANUARY TERM, 1987

ROBERT A. McCOURT,
NANCY A. RICH (Nee McCourt),
SUSAN M. MILLER (Nee McCourt),
MARY C. RILEY,

Respondents

vs.

JANET McCOURT,

Petitioner

PETITION FOR A WRIT OF CERTIORARI

FROM THE COURT OF APPEALS

OF THE STATE OF NEW YORK

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QUESTION PRESENTED FOR REVIEW

Did the New York State Court of Appeals in affirming the Lower Courts herein violate Article I, Section 10 of the United States Constitution in that the holdings impair the obligations of contracts?

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"ARTICLE I, SECTION 10, OF THE UNITED STATES CONSTITUTION PROHIBITS ANY LAW BY ANY STATE WHICH IMPAIRS THE OBLIGATION OF CONTRACTS. - THE CONTRACT OF INSURANCE HEREIN WITH THE BENEFICIARY CHANGED IN FAVOR OF THE PETITIONER IS A VALID AND ENFORCABLE CONTRACT. IT IS SEPARATE FROM THE SEPARATION AGREEMENT, ESPECIALLY THE PROVISION RELATING TO DESIGNATION OF THE CHILDREN AS BENEFICIARIES. - THE COURTS OF NEW YORK BY STRIKING DOWN A CHANGE IN BENEFICIARY AS PROVIDED BY THE INSURANCE CONTRACT WAS AN IMPAIRMENT OF THE OBLIGATION OF THAT CONTRACT AND VIOLATED THE WITHIN ARTICLE AND SECTION OF THE UNITED STATES CONSTITUTION."

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TO THE HONORABLE CHIEF JUSTICE

AND ASSOCIATE JUSTICES OF THE

SUPREME COURT OF THE UNITED STATES

PRAYER (Cont.)

The Petitioner, respecfully prays that a Writ of Certiorari issue to review the Order of the Court of Appeals, State of New York, denying permission for leave to appeal to said Court from the Supreme Court, Fourth Department which affirmed the Order of the Lower Court granting a Motion for Summary Judgment herein.

OPINION BELOW

The Court of Appeals, State of New York refused Petitioner's application for leave to appeal on November 11, 1986, which decision was mailed on said date to Petitioner's Counsel herein. (Appendix A). On July 11, 1986, the Supreme Court, Appellate Division, Fourth Department, affirmed a Lower Court Order granted by HON. NORMAN J. WOLF, JR., on the 11th day of September, 1985, and entered in the Office of the Clerk in the County of Erie on September 24, 1985, granting summary judgment to the Plaintiffs herein. (Appendix B)

JURISDICTION

The jurisdiction of the Court is invoked under Article I, Section 10, of the United States Constitution in view of the fact that the Courts of the State of New York, including the Court of Appeals impaired the obligation of the Insurance contract herein.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

Article I, Section 10, of the United States Constitution reads as follows:

"Section 10. Powers denied the states. [1] No state shall enter into any Treaty, alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any thing but gold and silver coin a Tender in payment of Debts; pass any Bill of Attainder, ex post facto Law or law impairing the obligation of Contracts, or grant any Title of Nobility."

STATEMENT OF FACTS

On the 21st day of September, 1984, the Respondent, MARY C. RILEY, fka MARY C. McCOURT, entered into a Separation Agreement with the Decedent, ROBERT McCOURT, her then husband (See Appendix C). On October 7, 1964, the said Respondent, and said ROBERT McCOURT, were granted a Mexican Divorce which incorporated said Separation Agreement.

Paragraph "SIXTH" of the Separation Agreement provides that a certain Life Insurance Policy, to wit: National Service Life Insurance Policy No. RS17375 917, in the amount of $10,000.00 shall be continued with Respondents as named beneficiaries: that on November 9, 1984, the said ROBERT McCOURT died and the proceeds of said Policy were paid to the Petitioner, JANET McCOURT, the widow of said ROBERT McCOURT, who was married to the Decedent on November 28, 1968; that

apparently, around the year 1974, the Decedent had changed the beneficiary to the Petitioner after he was notified the the Policy would be raised from $8.00 every three months to $44.90 every three months; that apparently, he signed such an agreement to save the Policy from cancellation and because his children were then fully emancipated, he made the change in beneficiary.

That it is undisputed that the said Petitioner is an innocent Party, who is not a Party to the Divorce Action, not a Party to the Separation Agreement and not a Party to the transaction wherein the Decedent saved the Policy from cancellation and named the said Petitioner as sole beneficiary.

Further, said Respondents, during the 20 years from the execution of the Separation Agreement, to the date of Decedent's death, never once asserted any rights in relation to said Policy, nor did they require any

documentation as to whether Paragraph "SIXTH" of the Separation Agreement was being complied with; that further, although the Decedent always complied with his duties to support said children, they completely ignored their father and never visited him, even though his daughter lived only a block away; that neither did they ever send a birthday card or any other type of greeting to him but completely alienated themselves from him. On the other hand, his second wife of 16 years was dutiful and devoted to him.

That besides this it is questionable whether the Mexican Decree is valid in view of the lack of a bonafide domicile in Mexico.

That after the Decedent's death an action was started by the Respondents against the Petitioner for the proceeds of the Policy and an Answer was duly interposed. Subsequently, the Motion for Summary Judgment was brought by said Respondents before HON.

NORMAN J. WOLF, JR., Supreme Court Judge and said Motion was granted on the 11th day of November, 1985; that said Order and Judgment were appealed to the Appellate Division of the Supreme Court, Fourth Judicial Department which affirmed the Lower Court by Memorandum Decision and Order duly entered July 11, 1986; that a Motion was made for permission for leave to appeal to the Court of Appeals which was denied on November 11, 1986.

REASON FOR GRANTING THE WRIT

ARTICLE I, SECTION 10, OF THE UNITED STATES CONSTITUTION PROHIBITS ANY LAW BY ANY STATE WHICH IMPAIRS THE OBLIGATION OF CONTRACTS.

THE CONTRACT OF INSURANCE HEREIN WITH THE BENEFICIARY CHANGED IN FAVOR OF THE PETITIONER IS A VALID AND ENFORCABLE CONTRACT. IT IS SEPARATE FROM THE SEPARATION AGREEMENT, ESPECIALLY THE PROVISION RELATING TO DESIGNATION OF THE CHILDREN AS BENEFICIARIES.

THE COURTS OF NEW YORK BY STRIKING DOWN A CHANGE IN BENEFICIARY AS PROVIDED BY THE INSURANCE CONTRACT WAS A IMPAIRMENT OF THE OBLIGATION OF THAT CONTRACT AND VIOLATED THE WITHIN ARTICLE AND SECTION OF THE UNITED STATES CONSTITUTION.

Article I, Section 10 of the United States Constitution states as follows:

"Section 10. Powers denied the states. [1] No state shall enter into any Treaty, alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any thing but gold and silver coin a Tender in Payment of Debts; pass any Bill of Attainer, ex post facto Law or law impairing the Obligation of Contracts, or grant any Title of Nobility."

The Contract of Insurance herein with the beneficiary changed in favor of the Petitioner is a valid and enforcable contract. It is separate from the Separation Agreement, especially the provision related to designating the children as beneficiaries.

The Court, by striking down the change in beneficiary as provided by the insurance contract, violated the within Article and Section of the U.S. Constitution. Logically, under said provision of the Constitution, how can a Court impair the obligation of the insurance contract in favor of the provision in the Separation Agreement without violating said provision of the Constitution?

That the Constitutional question was raised in the State Courts; that at any rate

a Constitutional issue can be raised at any time and during any stage of the proceedings.

The State Courts relied on prior decisions of the Court of Appeals, to wit: ROGERS vs. ROGERS, 63 NY 2nd, 582, and SIMONDS vs. SIMONDS, 45 NY 2nd, 232, which Counsel submits are in error and in which cases the Constitutional issue was not raised.

THAT THIS CASE OUGHT TO BE REVIEWED FURTHER BECAUSE IT IS AN ISSUE OF GREAT PUBLIC IMPORTANCE.

With the tremendous volume of matrimonial cases throughout the State of New York and in the United States, as well as the incorporation of Separation Agreements in Matrimonial Judgments, this case should be reviewed by this Court. This is especially so because a provision pertaining to the designation of irrevocable beneficiaries is common in Separation Agreements.

CONCLUSION

For the above reasons Petitioner prays that the Writ herein be granted.

Respectfully submitted,

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APPENDIX A

4-10 Mo. No. 1032

Robert A. McCourt, et al.,

Respondents,

vs.

Janet McCourt,

Appellant.

Motion for leave to appeal denied.

DECISION COURT OF APPEALS NOV 1 1 1986

APPENDIX B

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION, FOURTH JUDICIAL DEPARTMENT

PRESENT: CALLAHAN, J.P., DENMAN, BOOMER, GREEN, BALIO, JJ.

Robert A. McCourt, Nancy A. Rich, Susan M. Miller and Mary C. Riley,

Respondents

v.

Janet McCourt, Appellant

The above named Janet McCourt

having appealed to this Court from an order and judgment (one document)

of the Supreme Court, entered in the

Erie County Clerk's Office on September 24, 1985

and said appeal having been argued

Richard D. Grisanti, of counsel for appellant,

Robert Grimm, of counsel for respondents,

and due deliberation having been had thereon,

It is hereby ORDERED, That the order and judgment so appealed from be and the same hereby are unanimously affirmed without costs.

Memorandum, which is hereby made a part hereof.

Entered: JUL 11, 1986 CARMEN S. LEONE, Clerk

427 (Erie Co.)-Robert A. McCourt, Nancy A. Rich, Susan M. Miller and Mary C. Riley, Respondents, v. Janet McCourt, Appellant. - Order and Judgment unanimously affirmed, without costs. Memorandum: Plaintiffs, the former wife and children of the deceased, sued defendant, the deceased's second wife, to recover the proceeds of a life insurance policy. The children were originally named beneficiaries of the policy and, pursuant to a provision in a separation agreement incorporated but not merged in a divorce decree, the deceased agreed to continue the policy in effect, to make premium payments as they became due and to refrain from making any changes in the beneficiaries of the policy. Subsequent to the divorce, however, the deceased remarried and changed the beneficiary of the policy from the children to the defendant.

Special Term properly granted summary judgment to the plaintiffs. The unilateral modification of the policy by decedent breached the agreement which conferred upon the children an equitable interest in the proceeds of that policy (see, Rogers v Rogers, 63 NY 2nd 586 & 587; Simonds v Simonds, 45 NY 2nd 232, 210). Defendant is a proper and necessary party, notwithstanding that she was not a party to the separation agreement, because she received the proceeds which properly belong to the children. Decedent's estate is not a necessary party because the money is not being held as part of the estate (see, Markwica v Davis, 64 NY 2nd 38). We have considered defendant's remaining claims and find them without merit. (Appeal from Order and Judgment of Supreme Court, Erie County. Wolf. J. - Summary Judgment.) Present: Callahan, J.P., Denman, Boomer, Green, Balio, JJ.

APPENDIX C

SIXTH: (b) The Husband shall continue his Blue Cross and Blue Shield Insurance protection for the benefit of his said family and shall continue in effect a certain NATIONAL SERVICE LIFE INSURANCE POLICY # RS 17375917 in the amount of Ten Thousand Dollars on the life of said Husband and in which policy his said children above named, or the survivor or survivors of them shall be named as beneficiaries as said Husband agrees that he will make premium payments on it as they become due and he will not make any changes in beneficiary on said policy other than as herein set forth.